



**Vacant Unit Tax (By-law No. 2022-135)¹
And O. Reg. 458/22:
The Costs, The Waste and
The Harm**

December 2022 ©

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¹ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

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“Direct democracy permits individual citizens to make choices about specific policy issues. However, direct democracy raises serious concerns about the ability of referenda to address complex policy issues, the role of money in the voting process, the loss of democratic debate and the hindering of rational policy making. Given the experience with direct democracy in other jurisdictions (e.g., California), we believe that its role should be very limited and carefully structured. It should not be used for general policy decisions manageable by representative democracy, such as the desirable level of taxes.”³

³ Investing In People, Creating a Human Capital Society for Ontario, Panel on the Role of Government, p. 31-32

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EXECUTIVE SUMMARY

“Direct democracy permits individual citizens to make choices about specific policy issues. However, direct democracy raises serious concerns about the ability of referenda to address complex policy issues, the role of money in the voting process, the loss of democratic debate and the hindering of rational policy making. Given the experience with direct democracy in other jurisdictions (e.g., California), we believe that its role should be very limited and carefully structured. It should not be used for general policy decisions manageable by representative democracy, such as the desirable level of taxes.”⁴

Municipalities, by and large, are to supply services to the residents within the geographical boundaries of their community.⁵ Since amalgamation, though, the costs have increased exponentially to the point that municipalities are grasping for any and all sources of revenues. This has created a divide between the residents of said communities and the elected officials. Staff could be considered one of the basic reasons for a multitude of issues including an exorbitant increase in taxation, fees, fines, penalties, permits, etc. This document will be based on the demands as laid out on the City of Ottawa’s website and in the document from said page entitled: “*Vacant Unit Tax* (By-law No. 2022-135).”⁶

The one serious concern is that the residents of Ottawa, or anyone else, cannot obtain a copy of the By-law from the web-site and the web-site has a Disclaimer that only adds to the confusion. It states on the City of Ottawa web-site:

Disclaimer

By-laws contained in this section have been prepared for reference purposes only. Every effort is made to ensure the accuracy of this information; however it is not to be used in place of actual by-laws.

Actual by-laws can be obtained at the following locations:

City Archives

James Bartleman Centre
100 Tallwood Dr. (Corner of Woodroffe)
Ottawa, Ontario

⁴ Investing In People, Creating a Human Capital Society for Ontario, Panel on the Role of Government, p. 31-32

⁵ 2022 MUNICIPAL COUNCILORS GUIDE
<https://www.ontario.ca/document/ontario-municipal-councillors-guide#>

⁶ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

tel.: 613-580-2857

fax : 613-580-2614

e-mail: archives@ottawa.ca(link opens email application)

Ottawa Public Library

120 Metcalfe, Ottawa Room

613-580-2940”⁷

Whereas the *Municipal Act* clearly lays out that Municipalities are to ensure “*Accountability and transparency of the municipality and its operations and of its local boards and their operations.*”⁸ This Disclaimer, and the mistakes presented on the web-site, along with the inaction of Staff/Archive to provide the By-law upon emailed request shows that the City of Ottawa has failed even the simplest and yet more important test; to be accountable and transparent to the residents.

Since the cost of housing had increased across Canada, and in particular in Vancouver, BC,⁹ there has been an increase of municipal officials demanding the same allowance to implement Vacant Residential Unit Tax.

Is there actually a need, and have the need assessments been done, as laid out in various statutes and regulations, for the implementation of such egregious action by the City of Ottawa or any other municipality?

Is this taxation without representation considering how many past Council members did not run again for re-election?¹⁰

Global “best practices” are not applicable in Canada, or Ontario, as Canada has its own Constitution of which governments must uphold, for the protection of all Canadians and the residents of Ottawa. Is this action by the provincial government through Ontario Regulation 458/22 constitutional and/or does it infringe on the Charter rights of Ottawa residents?

Do the actions of the previous Council need to be continued considering one Council cannot bind the successive Council?

⁷ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

⁸ *Municipal Act*, section 10/11 subsection (2) paragraph 2.

⁹ **Speculation and vacancy tax generates millions, is being expanded, B.C. government says** *Provincewide, the tax brought in just over \$78 million in 2021. Of that, \$44.4 million or nearly 57 per cent, came from foreign owners and “satellite families.”* <https://vancouver.sun.com/news/local-news/speculation-and-vacancy-tax-generating-millions-is-being-expanded-b-c-government-says>

¹⁰ Analysis: Ottawa council election saw lots of change — but few surprises <https://ottawacitizen.com/news/politics/ottawa-council-election-saw-lots-of-change-but-few-surprises> *The new council under Mark Sutcliffe will have less collective experience than its predecessor.* Author of the article: Taylor Blewett Publishing date: Oct 25, 2022.

Does O. Reg. 458/22 and the “Vacant Unit Tax (By-law No. 2022-135)”¹¹ violate the *Municipal Act*, the duties of Council as well as the *Consumer Protection Act*, 2002, as this does not involve “personal development services,”¹² as defined in the *Consumer Protection Act*, 2002, considering it is an obligation under sections 10/11 subsection (2) paragraph 8 of the *Municipal Act*, regarding consumer protection?

To some residents the Vacant Unit Tax and the requirements involved are a bridge too far, particularly the reporting. This is unnecessary as the City would have all of the information needed by means of StatsCan/census, voter’s lists, public utilities, garbage pickup, etc., etc., etc. There is also the passing of Bill 23 - *More Homes Built Faster Act*, 2022 to secure that there is no need for this action, by the City of Ottawa.

¹¹ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

¹² “personal development services” means,

- (a) services provided for,
 - (i) health, fitness, diet or matters of a similar nature,
 - (ii) modelling and talent, including photo shoots relating to modelling and talent, or matters of a similar nature,
 - (iii) martial arts, sports, dance or similar activities, and
 - (iv) other matters as may be prescribed, and
- (b) facilities provided for or instruction on the services referred to in clause (a) and any goods that are incidentally provided in addition to the provision of the services; (“services de perfectionnement personnel”) *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A

NEEDS ASSESSMENTS

Is there actually a need for the Vacant Unit Tax if there hasn't been a "needs assessment"¹³ done, as laid out in various statutes and regulations for the implementation of such an egregious action by the City of Ottawa?

There are a number of various pieces of legislation and regulation pertaining directly and indirectly to various forms of housing. These include but are not limited to:

1. Canadian Mortgage and Housing Corporation Act
2. Housing Development Act
3. Housing Development Act O REG 641
4. Housing Services Act, 2011
5. Housing Services Act, 2011 O REG 367 11
6. Housing Services Act, 2011 O REG 368 11
7. Housing Services Act, 2011 O REG 369 11

¹³ Housing Services Act, 2011

HOUSING AND HOMELESSNESS PLANS

Housing and homelessness plans

6 (1) Each service manager shall have a plan to address housing and homelessness. 2011, c. 6, Sched. 1, s. 6 (1).

What plan must include

(2) The plan must include,

- (a) an assessment of current and future housing needs within the service manager's service area;
- (b) objectives and targets relating to housing needs;
- (c) a description of the measures proposed to meet the objectives and targets;
- (d) a description of how progress towards meeting the objectives and targets will be measured; and
- (e) such other matters as may be prescribed. 2011, c. 6, Sched. 1, s. 6 (2).

Requirements relating to provincial interest, policy statements

(3) The plan must,

- (a) address the matters of provincial interest under section 4, including each aspect described in a clause of subsection 4 (1); and
- (b) be consistent with the policy statements issued under section 5. 2011, c. 6, Sched. 1, s. 6 (3).

Prescribed requirements

(4) The plan must comply with the prescribed requirements. 2011, c. 6, Sched. 1, s. 6 (4).

Period of plan

(5) The period covered by the plan must extend for at least the minimum period described in subsection (6) after the plan was approved or, if the plan is reviewed under subsection 10 (1), after the review was completed. 2011, c. 6, Sched. 1, s. 6 (5).

Minimum period

(6) The minimum period referred to in subsection (5) is 10 years or such other period as may be prescribed. 2011, c. 6, Sched. 1, s. 6 (6).

Time for initial plan

(7) A service manager shall approve its initial plan on or before the prescribed date. 2011, c. 6, Sched. 1, s. 6 (7)."

8. Municipal Act¹⁴
9. Municipal Act, 2001 O REG 599 06¹⁵ (Economic Development)¹⁶
10. Municipal Act, 2001 O REG 586 06
11. National Housing Act
12. Ontario Planning and Development Act, 1994
13. Planning Act¹⁷
14. Planning Act O REG 232 18¹⁸

¹⁴ “economic development services” means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses;”

¹⁵ **Assistance to corporation**

- 15.** (1) Despite section 106 of the Act, a municipality may provide assistance to a corporation,
- (a) if the corporation is a wholly-owned corporation and is limited by its articles or letters patent to providing services to the owners or members of the corporation;
 - (b) if the purpose of the assistance is to subsidize the cost of public transportation facilities or services or public access to recreational and cultural facilities; or
 - (c) if,
 - (i) the purpose of the assistance is to facilitate the provision by the corporation of affordable housing, as defined in a by-law made by the municipality respecting provision of assistance to the corporation for this purpose, and
 - (ii) the by-law contains policies regarding public eligibility for the housing units provided as part of the affordable housing. O. Reg. 599/06, s. 15 (1); O. Reg. 152/16, s. 1.
- (2) The types of assistance that may be provided under subsection (1) are,
- (a) giving, lending or selling any property of a municipality, including money;
 - (b) guaranteeing borrowing;
 - (c) providing the services of employees of or persons under contract with a municipality. O. Reg. 599/06, s. 15 (2).
- (3) The assistance provided under clause (2) (a), (b) or (c) need not be at fair market value. O. Reg. 599/06, s. 15 (3).
- (4) The treasurer shall prepare a statement of the value of any grant to a corporation or an estimate of the fair market value of any other assistance provided at less than fair market value to a corporation under this section. O. Reg. 599/06, s. 15 (4).

¹⁶ “economic development services” means, in respect of a municipality, the promotion of the municipality by the municipality for any purpose by the collection and dissemination of information and the acquisition, development and disposal of sites by the municipality for industrial, commercial and institutional uses;

¹⁷ <https://www.ontario.ca/laws/statute/90p13>

¹⁸ **Assessment report**

- 2.** (1) An assessment report required by subsection 16 (9) of the Act shall include information to be considered in the development of official plan policies described in subsection 16 (4) of the Act, including the following:
1. An analysis of demographics and population in the municipality.
 2. An analysis of household incomes in the municipality.
 3. An analysis of housing supply by housing type currently in the municipality and planned for in the official plan.
 4. An analysis of housing types and sizes of units that may be needed to meet anticipated demand for affordable housing.
 5. An analysis of the current average market price and the current average market rent for each housing type, taking into account location in the municipality.

15. Planning Act O REG 550 06
16. Promoting Affordable Housing Act, 2016
17. Residential Tenancies Act, 2006
18. Residential Tenancies Act, 2006 O REG 394 10
19. Strong Communities through Affordable Housing Act, 2011

Until there has been a needs assessment done the “Vacant Unit Tax (By-law No. 2022-135)”¹⁹ may be unsubstantiated and considered, by some, as taxation without representation and/or without supportive lawful reason.

-
6. An analysis of potential impacts on the housing market and on the financial viability of development or redevelopment in the municipality from inclusionary zoning by-laws, including requirements in the by-laws related to the matters mentioned in clauses 35.2 (2) (a), (b), (e) and (g) of the Act, taking into account:
 - i. value of land,
 - ii. cost of construction,
 - iii. market price,
 - iv. market rent, and
 - v. housing demand and supply.
 7. A written opinion on the analysis described in paragraph 6 from a person independent of the municipality and who, in the opinion of the council of the municipality, is qualified to review the analysis.
- (2) The analysis described in paragraph 6 of subsection (1) shall take into account the following related to growth and development in the municipality:
1. Provincial policies and plans.
 2. Official plan policies.
- (3) An updated assessment report required by subsection 16 (10) or (11) of the Act shall contain the information specified in subsection (1).

¹⁹ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

TAXATION WITHOUT REPRESENTATION

Is this taxation without representation considering how many past Council members did not run for re-election?²⁰

In 2004 there was a report done on how to govern Ontario. In said report there were some very undemocratic recommendations, of which the below is an example.

“Direct democracy permits individual citizens to make choices about specific policy issues. However, direct democracy raises serious concerns about the ability of referenda to address complex policy issues, the role of money in the voting process, the loss of democratic debate and the hindering of rational policy making. Given the experience with direct democracy in other jurisdictions (e.g., California), we believe that its role should be very limited and carefully structured. It should not be used for general policy decisions manageable by representative democracy, such as the desirable level of taxes.”²¹

It is quite clear in the *Municipal Act*²² as well as the *Municipal Elections Act*²³ that there are avenues for municipalities to ask for referendum on these types of issues. Was the

²⁰ Analysis: Ottawa council election saw lots of change — but few surprises

<https://ottawacitizen.com/news/politics/ottawa-council-election-saw-lots-of-change-but-few-surprises>

The new council under Mark Sutcliffe will have less collective experience than its predecessor.

Author of the article: Taylor Blewett Publishing date: Oct 25, 2022.

²¹ Investing In People, Creating a Human Capital Society for Ontario, Panel on the Role of Government, p. 31-32

²² Elections

4. (1) A municipality and a local board do not have power to impose fees or charges on another municipality or local board under the Act that relate to the conduct of an election under the *Municipal Elections Act, 1996*. O. Reg. 584/06, s. 4 (1).

(2) Subsection (1) does not apply to the power of a municipality or local board to impose fees or charges on another municipality or local board that relate to the conduct of an election under the *Municipal Elections Act, 1996* to obtain the opinion of the electors on a question the other municipality or local board requires to be submitted under subsection 8 (1) or (2) of that Act. O. Reg. 584/06, s. 4 (2).

²³ Regular elections

4 (1) A regular election to fill offices shall be held in 2006 and in every fourth year thereafter. 2006, c. 9, Sched. H, s. 1.

By-laws and questions, municipalities

(2) A vote on a by-law or question that a municipality wishes to submit to the electors shall be combined with the next regular election, unless the municipality provides, by by-law, that the vote shall be held at another time. 1996, c. 32, Sched., s. 4 (2).

Questions, local boards and Minister

(3) Subsection (2) applies with necessary modifications to a vote on a question that a local board or the Minister wishes to submit to the electors. 1996, c. 32, Sched., s. 4 (3).

Exception

(4) The vote on a question under section 53 or 54 of the *Liquor Licence Act*, as it read immediately before it was repealed, or under any successors to those provisions in a regulation made under the *Liquor Licence and Control Act, 2019*, may be held at another time than the next regular election only with the approval of the board of the Alcohol and Gaming Commission of Ontario under section 55 of the *Liquor Licence Act*, as it read immediately before it was repealed, or under any successor to that provision in a regulation made under the *Liquor Licence and Control Act, 2019*. 2019, c. 15, Sched. 22, s. 100 (1).

Submission of by-laws and questions

8 (1) The council of a municipality may pass a by-law to submit to its electors,

- (a) a proposed by-law requiring their assent;
- (b) subject to section 8.1, a question not otherwise authorized by law but within the council's jurisdiction;
- (c) subject to section 8.1, a question, the wording of which is established by an Act or a regulation under an Act. 1996, c. 32, Sched., s. 8 (1); 2000, c. 5, s. 27 (1).

Submission of question, local board

(2) A local board described in subparagraph iii of paragraph 1 of section 3 may pass a resolution to submit to its electors a question not otherwise authorized by law but within the local board's jurisdiction. 1996, c. 32, Sched., s. 8 (2).

(2.1) Repealed: 2000, c. 5, s. 27 (2).

Question by Minister

(3) The Minister may make an order requiring the clerk of a local municipality to submit a question to the electors of his or her municipality. 1996, c. 32, Sched., s. 8 (3).

Transmission to clerk

(4) When an upper-tier municipality acts under subsection (1), its clerk shall transmit to the clerk who is responsible for conducting the election a copy of the by-law and the proposed by-law or question. 1996, c. 32, Sched., s. 8 (4).

Same

(5) When a local board acts under subsection (2), its secretary shall transmit to the clerk who is responsible for conducting the election a copy of the resolution and question. 1996, c. 32, Sched., s. 8 (5).

Restriction

(5.1) For the purposes of a regular election, the clerk who is responsible for conducting the election is not required to submit a by-law or question to the electors unless on or before May 1 of the election year,

- (a) in the case of a question of the Minister, the order under subsection (3) is transmitted to the clerk;
- (b) in the case of a by-law or question of an upper-tier municipality, subsection (4) is complied with;
- (c) in the case of a question of a local board, subsection (5) is complied with; or
- (d) despite the *Fluoridation Act*, in the case of a petition under the *Fluoridation Act*, the petition is transmitted to the clerk. 2002, c. 17, Sched. D, s. 3; 2009, c. 33, Sched. 21, s. 8 (5); 2016, c. 15, s. 7 (1).

Deemed transmission of petition

(5.2) Despite the *Fluoridation Act*, if a petition under the *Fluoridation Act* is submitted in the election year of a regular election after May 1, the petition is deemed to have been transmitted to the clerk on February 1 of the following year. 2002, c. 17, Sched. D, s. 3; 2009, c. 33, Sched. 21, s. 8 (6); 2016, c. 15, s. 7 (2).

Notice to electors

(6) The clerk who is responsible for conducting the election shall give the electors notice of by-laws and questions referred to in this section. 1996, c. 32, Sched., s. 8 (6).

Cost of giving notice

(7) The upper-tier municipality or local board or the Minister, as the case may be, shall pay the local municipality's reasonable costs of giving notice under subsection (6), as soon as possible after receiving a certificate verifying the amount and signed by the clerk of the local municipality. 1996, c. 32, Sched., s. 8 (7).

Assent to by-law

(8) A by-law is assented to,

- (a) in the case of a local municipality, if a majority of the votes cast in the municipality are in favour of the by-law;

(b) in the case of an upper-tier municipality, if a majority of the votes cast in all the local municipalities are in favour of the by-law. 1996, c. 32, Sched., s. 8 (8).

Result of vote

(9) When the time for applying for a recount has expired without an application being made, or when any application for a recount has been finally disposed of, the clerk shall certify the result of the vote in his or her municipality to the clerk of the upper-tier municipality, the secretary of the local board or the Minister, as the case may be. 1996, c. 32, Sched., s. 8 (9).

Waiting period

(10) A council shall not consider a proposed by-law to which the electors' assent has been obtained until the 14th day after the result of the vote is certified. 1996, c. 32, Sched., s. 8 (10).

Conflicts

(11) In cases of conflict, the Act or regulation establishing the wording of a question under clause (1) (c) or the Act authorizing the regulation establishing the wording of the question prevails over this Act or a regulation under this Act. 2000, c. 5, s. 27 (3).

Expenses

(12) Nothing in this Act prevents a municipality or the clerk of a municipality from incurring expenses in respect of a question which are required or authorized by this Act to be incurred. 2016, c. 15, s. 7 (3).

Section Amendments with date in force (d/m/y)

Conditions re: submitting a question

- 8.1** (1) A by-law to submit a question to the electors under clause 8 (1) (b) or (c),
- (a) shall be passed on or before March 1 in the year of a regular election at which it is intended to submit the question to the electors;
 - (b) cannot be amended after the last date referred to in clause (a); and
 - (c) despite clause (b), can be revoked on or before nomination day and, if the election does not include an election for an office, on or before the 31st day before voting day. 2000, c. 5, s. 28; 2016, c. 15, s. 8.

Rules

- (2) A question authorized by by-law under clause 8 (1) (b) shall comply with the following rules:
- 1. It shall concern a matter within the jurisdiction of the municipality.
 - 2. Despite rule 1, it shall not concern a matter which has been prescribed by the Minister as a matter of provincial interest.
 - 3. It shall be clear, concise and neutral.
 - 4. It shall be capable of being answered in the affirmative or the negative and the only permitted answers to the question are "yes" or "no". 2000, c. 5, s. 28.

Notice of intent

(3) Before passing a by-law under clause 8 (1) (b) or (c), the clerk shall give at least 10 days notice of the intention to pass the by-law to the public and the Minister and hold at least one public meeting to consider the matter. 2000, c. 5, s. 28.

Notice of by-law

(4) Within 15 days after a municipality passes a by-law under clause 8 (1) (b) or (c), the clerk shall give notice of the passage of the by-law to the public and the Minister. 2000, c. 5, s. 28.

Contents

- (5) A notice under subsections (3) and (4) shall include,
- (a) the wording of the question;
 - (b) in the case of a by-law under clause 8 (1) (b), a clear, concise and neutral description of the consequences of the question if it is approved and the consequences if it is rejected with the special majority under section 8.2, including an estimate of the costs, if any, that the municipality may incur in implementing the results of the question; and
 - (c) in the case of a by-law under clause 8 (1) (b), a description of the right to appeal under subsection (6) including, in the case of a notice under subsection (4), the last day for filing a notice of appeal. 2000, c. 5, s. 28.

Appeal

(6) Within 20 days after the clerk gives notice of the passage of a by-law under clause 8 (1) (b), the Minister or any other person or entity may appeal to the Chief Electoral Officer of the Province of Ontario on the grounds the question does not comply with paragraph 3 or 4 of subsection (2) by filing with the

question asked, pertaining to By-law 2022-135 for the City of Ottawa? It would seem it was not.

clerk a notice of appeal setting out the objections and the reasons in support of the objections. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Notices to be forwarded

(7) The clerk shall, within 15 days after the last day for filing a notice of appeal under subsection (6), forward any notices of appeal received to the Chief Electoral Officer. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Other information

(8) The clerk shall provide any other information or material to the Chief Electoral Officer that the Chief Electoral Officer requires in connection with the appeal. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Hearing

(9) The Chief Electoral Officer or his or her designate shall, within 60 days of receiving notices under subsection (7), hold a hearing and dismiss the appeal or allow the appeal in whole or in part. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Order

(10) If the Chief Electoral Officer allows the appeal in whole or in part, the Chief Electoral Officer may make an order amending the by-law or directing the municipality to amend the by-law in the manner ordered. 2000, c. 5, s. 28; 2007, c. 15, s. 40 (1).

Non-application

(11) Subsections (1) and (3) to (9) do not apply to anything done pursuant to an order under subsection (10). 2000, c. 5, s. 28.

CONTRADICTIONS WITH REGULATIONS AND LEGISLATION

Does O. Reg. 458/22 and the “Vacant Unit Tax (By-law No. 2022-135)”²⁴ violate the *Municipal Act*, the duties of Council as well as the *Consumer Protection Act*, 2002, as this does not involve “personal development services,”²⁵ as defined in the *Consumer Protection Act*, 2002, considering it is an obligation under sections 10/11 subsection (2) paragraph 8 of the *Municipal Act*, regarding consumer protection?

Under the *Municipal Act*, sections 10/11 subsection (2) paragraph 8 it states:

“Broad authority, lower-tier and upper-tier municipalities

11. (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4). 2006, c. 32, Sched. A, s. 8.

By-laws

(2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:

8. Protection of persons and property, including consumer protection. 2006, c. 32, Sched. A, s. 8.”

This lays out that a Municipal Council is obligated not to harm persons, said person’s property and must be concerned with consumer protection. This would include consumer protection of the residents above the municipality, as a corporation.

That said, Bylaw No. 2022-135 involves the City, as merely a supplier of goods and services, “*demand[ing] payment or mak[ing] ... representation that suggests that a*

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consumer is required to make payment²⁶ in respect of any unsolicited goods or services.”²⁷

And yet this By-law does not fill the criteria as laid out in the Municipal Councilor’s Guide, 2022, which states:

“Implications of passing the by-law may include such issues as:

- how will the by-law affect the community?
- **will it impose restrictions or hardships on particular areas or groups of people?**
- will public reaction be favourable? If not, how will council respond?
- **what will it cost to administer the by-law?**
- can existing staff be expected to handle the additional responsibilities, or will more staff be required?
- is the municipality prepared to enforce the by-law and enforce it consistently?”²⁸

²⁶ **“PART V Consumer Bills and Notes**

Valuable consideration

52 (1) Valuable consideration for a bill may be constituted by

- **(a)** any consideration sufficient to support a simple contract; or
- **(b)** an antecedent debt or liability.

Form of bill

(2) An antecedent debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.

Definitions

188 In this Part,

goods means any article that is or may be the subject of trade or commerce, but does not include land or any interest therein;” *Bills of Exchange Act*.

²⁷ *Consumer Protection Act, 2002*

²⁸ 2022 Municipal Councilor’s Guide <https://www.ontario.ca/document/ontario-municipal-councillors-guide#>

CONSTITUTIONAL AND CHARTER QUESTIONS

Global best practices are not applicable in Canada, or Ontario, as Canada has its own Constitution of which governments must uphold, for the protection of all Canadians and the residents of Ottawa. Is this action, by the provincial government through Ontario Regulation 458/22,²⁹ constitutional and/or does it infringe on the Charter rights of Ottawa residents?

"[35] The common law has long recognized the sanctity of a person's home. Sir Edward Coke, in The Institutes of the Laws of England, 1628: "For a man's house is his castle, ... [and each man's home is his safest refuge]." In 1763 British Prime Minister William Pitt, the first Earl of Chatham, also known as Pitt the Elder stated as follows: "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter."³⁰

For as long as there have been common law rights, there have been constitutional rights. This particularly involves the rights of ownership and the rights against unwarranted search and seizure. The contents of By-law 2022-135; what had been expressed on the City of Ottawa's website; and various correspondence with residents, would seem to do just that – violate constitutional and Charter rights.

As we have seen the By-law is in contradiction of the *Municipal Act*, the *Consumer Protection Act*, the *Bills of Exchange Act*, the multitude of housing legislation and regulations, and now it can be questioned under the Constitution and the Charter.

The Constitution lays out that property taxes (assessments) may be made for the support of government to provide services. What services are the City of Ottawa supplying to the various residential property owners that would justify a 1% penalty on a residential property that is unoccupied? These properties pay their taxes, for the

²⁹ **Municipal Act, 2001 458 22**

ONTARIO REGULATION 458/22

OPTIONAL TAX ON VACANT RESIDENTIAL UNITS - DESIGNATED MUNICIPALITIES

Consolidation Period: From May 3, 2022 to the e-Laws currency date.

No amendments.

This is the English version of a bilingual regulation.

Designated municipalities

1. The following municipalities are designated for the purposes of Part IX.1 of the Act:

1. The City of Hamilton.
2. The City of Ottawa.

2. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

³⁰ R. v. Stevens, 2011 ONCJ 794 (CanLII)

support of the municipality, and yet use far less services; i.e. garbage pick-up, sewer and water, library, parks and rec, etc., etc., etc. Therefore, this may or may not be a tax, and may actually be a penalty and yet the municipality does not have the constitutional authority to penalize someone for not living in a residence for less than 184 days (approx., 6 months). That was not specified in O. Reg. 458/22 all this regulation did was “designate” the City of Ottawa to allow for vacant residential units under Part IX.1 of the *Municipal Act*.

Under “Part IX.1 – Optional Tax on Vacant Residential Units,” is section 338.3 which states:

“Regulations re: power to impose tax

- 338.3** (1) The Minister of Finance may make regulations prescribing such matters as the Minister considers necessary or desirable in relation to this Part, including,
- (a) designating municipalities to which this Part applies; - **O. Reg. 458/22**
 - (b) prescribing conditions and limits with respect to the imposition of a tax under a by-law made under this Part; - **No regulation**
 - (c) prescribing persons and entities who are not subject to a tax imposed under this Part;
 - (d) defining “vacant unit” for the purposes of this Part; - **No regulation**
 - (e) governing the collection of a tax imposed under this Part; - **No regulation**
 - (f) prescribing provisions of this Act that apply or do not apply for the purposes of this Part and providing for such modifications to those provisions as the Minister considers appropriate; - **No regulation**
 - (g) governing the manner for apportioning an assessment that is attributable to vacant units; - **No regulation**
 - (h) governing dispute resolution. 2017, c. 8, Sched. 19, s. 5.”³¹

Upon further investigation there are no definitions of “vacant unit” defined for the purposes of Part IX.1 of the *Municipal Act*. So where did the City of Ottawa actually find a definition of “vacant unit,” and if not in legislation and/or regulation the definition under By-law 2022-135 doesn’t lawfully exist, does it? Until the Minister has created the regulations there is nothing that can be used to create By-laws under sections 338.1-338.4 etc., of the *Municipal Act*, as clearly stated in section 338.3.

For the Charter/Constitutional question, one must look to sections 1, 6, 7, 8, 13, 15, 26, 36 and 92 of the Constitution.

Section 1³² of the Charter lays out “*reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*” It would seem, without

³¹ <https://www.ontario.ca/laws/statute/01m25>

³² **Rights and freedoms in Canada**

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

definitions and/or interpretations the By-law is unreasonable. It would also seem the By-law is not justified in a “*free and democratic society*” as there was no referendum on this tax during the Municipal election.

Section 6³³ of the Charter expresses that every Canadian, including those of permanent resident status, has the right to take up residence in any province; to pursue gainful employment, that government cannot discriminate on the basis of province of present or previous residence; **cannot demand residency requirements**. By-law 2022-135 seems in complete contradiction to section 6 of the Charter.

Section 7³⁴ of the Charter lays out that “*Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*” Making demands for information that is already available to the City, and/or denying anyone the right **not** to be taxed for, merely, not living at a specific address/roll number, and/or for not having an Ottawa address as a permanent place of residence (i.e. Federal MPs, Senators, etc.,) is a violation to the principles of fundamental justice, is it not?

Section 8³⁵ of the Charter protects the residents of Ottawa from “*unreasonable search or seizure.*” Demanding that a resident “qualify” that they are a resident for tax purposes so they won’t be charged an additional tax for making Ottawa their part-time residence is unreasonable and a seizure of their information.

³³ **Mobility Rights**

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
- (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

³⁴ **Life, liberty and security of person**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

³⁵ **Search or seizure**

8. Everyone has the right to be secure against unreasonable search or seizure.

Section 13³⁶ of the Charter establishes that a person is not obligated to incriminate themselves, therefore, it would seem the demand to property owners to report to the City is violating another fundamental right.

Under section 15,³⁷ of the Charter, we are all to be treated equally. If one owns residential property and has not rented it, does not reside in/on said property and is charged a tax/fee because of that option, is discriminatory, particularly if that property owner is from one of the defined classes of persons protected under section 15.

As late as October 2022 section 26,³⁸ of the Charter was recognized by the Supreme Court of Canada. The Vacant Unit Tax violates the previous rights of the residents of Ottawa. As the SCC lays out:

“[24]...But the *Charter* is not, and never has been, the sole source of Canadians’ rights against the state; in particular, the common law also affords protections of individual liberty. Nor is the *scope* of common law rights dependent on whether such rights are also entrenched in the *Charter*. While this follows as a matter of logic, s. 26 of the *Charter* itself affirms that “[t]he guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.”³⁹

As expressed, the common law has stated, as late as 2022, and prior to the 2022 SCC ruling, in 2011 in the Ontario Courts:

“[35] *The common law has long recognized the sanctity of a person’s home. Sir Edward Coke, in The Institutes of the Laws of England, 1628: “For a man’s house is his castle, ... [and each man’s home is his safest refuge].” In 1763 British Prime Minister William Pitt,*

³⁶ **Self-crimination**

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

³⁷ **Equality Rights**

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

³⁸ **Other rights and freedoms not affected by Charter**

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

³⁹ Annapolis Group Inc. v. Halifax Regional Municipality, 2022 SCC 36, JUDGMENT RENDERED: October 21, 2022, DOCKET: 39594

*the first Earl of Chatham, also known as Pitt the Elder stated as follows:
"The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter."⁴⁰*

If the King cannot enter neither can the province nor a municipal corporation, particularly to add yet another tax, or at least they shouldn't be of that thought based on Canadian's democratic and constitutional/Charter rights.

Section 36,⁴¹ of the of the Constitution expresses that Parliament and/or the provinces are committed to promoting equal opportunities for the well-being of Canadians; reducing disparity in opportunities for Canadians; **and providing essential public services of reasonable quality to all Canadians with reasonable taxation.**

This by-law is not providing a service; it is interfering and increasing disparity; removing opportunity from Canadians; and is unreasonably increasing taxes with no services being provided.

Section 92,⁴² of the Constitution brings in "direct taxation." It states: "92 (8) *Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.*" There are no purposes that could constitute a City to tax a dwelling without someone residing in said dwelling, as that dwelling would not be receiving any services and yet the property owner is still obligated to pay. Each property owner must be treated equally, as any other property owner, without having to present to the City whether someone lives, uses services, pays education taxes, etc.

In light of all of these sections of the Constitution and Charter perhaps the Council might rethink this egregious By-law or it may actually have a reverse affect. Those who own

⁴⁰ R. v. Stevens, 2011 ONCJ 794 (CanLII)

⁴¹ **PART III
EQUALIZATION AND REGIONAL DISPARITIES
Commitment to promote equal opportunities**

36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and
- (c) providing essential public services of reasonable quality to all Canadians.

Commitment respecting public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

⁴² *Exclusive Powers of Provincial Legislatures*

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, —

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

property and yet do not live in/on said property and/or do not rent/lease said property, may very well sell said property increasing the costs to the City for services that would have to be supplied to these properties.

EITHICS OF CORRECTING A WRONG

Do the actions of the previous Council need to be continued considering one Council cannot bind the successive/future Council?⁴³

After many months, the Town of Collingwood Inquiry report, by CJ Frank Marrocco, has been released. It is titled “*Transparency and the Public Trust*,” and according to the CJ Marrocco it is applicable to all Municipalities,⁴⁴ so perhaps Councils, throughout Ontario, should read these documents.

For many years some people, in Ontario, have been seeing the affects of questionable actions by/in their municipalities. What I find quite telling, in CJ Marrocco’s report, are the recommendations to Council, the CAO and staff, and it seems his main concern is the lack of ethics in Council and the staff, who present information to Council, in the creation and passing of by-laws.

In regards to Municipal Councils, the province of Ontario issues a “*Municipal Councillor’s Guide*” during/after every Municipal Election. In the 2022 guide, is Chapter 7, “*Councillors as Law Makers*” and Chapter 8 “*Exercising Municipal Powers*.” As found in the document by CJ Marrocco, some staff may not be trusted, and most municipalities cannot afford to continue to pay solicitors to research and investigate recommended by-laws, presented by staff. As for Councilors passing by-laws to ensure they are immune and/or are seeming to do things – lawfully or not – merely for some public opinion, that is not what passing by-laws are for. It would seem this leads back to the ‘ethics’ question, doesn’t it, and would a member of council want said By-laws implemented on them and/or abuse of themselves, as residents of their municipality?

That being said, isn’t it the obligation of Council members to do research, after all they are to know and understand the limitations of their authority, and they are to know and understand the legislation which pertains to the municipalities? At least that is what the “*Municipal Councilors Guide*” tells them.

⁴³ “18 ... Esson J.A referred first to the foundational principle that a municipal council cannot bind future councils. ... the proper approach to municipal powers was to interpret them so that a present council could not bind future citizens. Based on *Vancouver v. Registrar Vancouver Land Registration District*, [1955 CanLII 275 \(BC CA\)](#), [1955] 2 D.L.R. 709 (B.C.C.A.), and *Ingledeu’s Ltd. v. City of Vancouver* (1967), [1967 CanLII 513 \(BC SC\)](#), 61 D.L.R. (2d) 41 (B.C.S.C.), Esson J.A. held that even making the City liable for damages could effectively bind a future municipal government. ... Esson J.A. concluded that the City lacked the power to fetter future councils.” *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64 (CanLII), [2000] 2 SCR 919.

⁴⁴ “... The concepts underlying these recommendations are, therefore, applicable to municipalities throughout the Province of Ontario.” *Transparency and the Public Trust Report of the Collingwood Judicial Inquiry Vol. IV*, Associate Chief Justice Frank N. Marrocco, Commissioner, Introduction, p. 3

“Legal considerations on exercising power

A fundamental consideration is the constitutional position of local government. The Constitution Act, 1982 (formerly the British North America Act, 1867) states that provincial governments have the exclusive right to pass laws respecting municipal institutions. Because municipalities are provincial creations, generally they only do what they have been authorized to do by the provincial government. A number of general consequences follow from this:

- *a provincial government may give a municipality only those powers that it may exercise itself within the Constitution’s division of federal and provincial powers*
- *generally, a municipal by-law may not override a conflicting provincial statute. A by-law that was valid when passed may become invalid if an overriding provincial statute is later passed*
- *if a municipality takes action on something it does not have statutory authority over, or that is not within its authority, the courts could quash the action as being “ultra vires” (beyond the powers of the municipality)*

Canadian Charter of Rights and Freedoms

There is another constitutional implication for local government. Part One of the Constitution Act, 1982, contains the Canadian Charter of Rights and Freedoms. The Charter is relevant for federal and provincial levels of government, as well as municipalities, in passing laws and taking other action.”⁴⁵

As expressed, CJ Marrocco was quite concerned with the “ethics” of staff and members of Council, and in some instances, rightfully so. Why should the people of Ontario have to spend their hard-earned money challenging municipal by-laws which, to a reasonable person, is unlawful and beyond the legislative authority of the Municipalities? It is repugnant for staff and/or Council members to tell the “tax-payer” to take them [municipality] to Court and to challenge the “tax-payers,” of their own municipality. This isn’t good ethics nor is it conducive of the operation of the municipalities. Shouldn’t the Council be researching and reading what the statutes [in their entirety] tell them and finding out if staff is misleading the Council instead of penalizing the people of their municipalities? It is Councils obligation to protect the people from misguided staff members and to ensure the by-laws they pass are lawful, at least according to the Councilors Guide.

From the Inquiry some recommendations to Council:

“17 The Code of Conduct should state that Council members must perform their duties with integrity, objectivity, transparency, and accountability to promote public trust and confidence. The public is entitled to expect the highest standards of conduct from the individuals they elect to local government ...

18 The Code of Conduct should state that Council members at the Town...must comply with all applicable provincial and federal legislation, Town by-laws, and Town policies concerning “their position as an elected official”.

⁴⁵ 2022 MUNICIPAL COUNCILORS GUIDE

<https://www.ontario.ca/document/ontario-municipal-councillors-guide#>

28 The Code of Conduct should state that Council members must understand and adhere to their obligations concerning real, apparent, and potential conflicts of interest under the *Municipal Conflict of Interest Act*, the Code of Conduct for Council members in ...[Town], and other relevant Town policies and legislation.”

From the Inquiry some recommendations for staff:

“97 Staff must not conceal or manipulate information. Staff must never intentionally misrepresent facts or information.

101 Staff should be prohibited from participating “in the analysis of information” or making any “decisions on an issue or matter in which” staff have “a real or apparent conflict of interest”.

102 The Code of Conduct should prohibit staff from using their positions at the Town...”to further their private interests”.

104 Staff “shall not use information for personal or private gain” or the gain of family, relatives, or friends.

109 The Code of Conduct should state that staff reports must be objective and identify a full range of options for Council to consider. The risks associated with options must be clearly and fully presented. At no time should the fiscal impacts of any option be minimized by staff.

112 The Code of Conduct should state that staff should not summarize or explain the findings of a consultant’s report. A consultant should be available to speak to Council and respond to questions and issues that arise from the consultant’s report..

124 Any staff “found to have violated the Code of Conduct may be subject to disciplinary action,” “including discharge from employment.” A clear message must be sent that ethical misconduct by staff is serious misconduct and the penalties should reflect this principle.”

Is By-law 2022-135 needed, has there been a needs assessment done, is it ethical, does it violate Constitutional and Charter Rights? If members of Council cannot answer these questions to the satisfaction of the residents of Ottawa, they are morally obligated to repeal this By-law, are they not?

CONCLUSION

Whereas the *Municipal Act* clearly lays out that Municipalities are to ensure “Accountability and transparency of the municipality and its operations and of its local boards and their operations.”⁴⁶ The Disclaimer and the mistakes presented on the web-site, of the City of Ottawa, along with the inaction of Staff/Archive to provide the By-law upon emailed request, shows that the City of Ottawa has failed even the simplest and yet more important task; to be accountable and transparent to the residents.

Is there actually a need, and have the need assessments been done, as laid out in various statutes and regulations, for the implementation of such egregious action by the City of Ottawa?

Recommendation – a needs assessment should be done to determine if this tax is a viable avenue for the City to follow, considering the amount of legislation and/or regulation that prescribes that needs assessments be done.

Is this taxation without representation considering how many past Council members did not run?⁴⁷

Recommendation – as there was no referendum/question asked during the 2022 Municipal election on this issue, By-law 2022-135 should be repealed as it may be considered taxation without representation considering how many members of the past Council did not run for re-election, including the previous Mayor.

Is this action by the provincial government through Ontario Regulation 458/22 constitutional and/or does it infringe on the Charter rights of Ottawa residents? Is O. Reg. 458/22 and the “Vacant Unit Tax (By-law No. 2022-135)”⁴⁸ violate the *Municipal Act*, the duties of Council as well as the *Consumer Protection Act*, 2002 considering it is an obligation under sections 10/11 subsection (2) paragraph 8 of the *Municipal Act*?

Recommendation – that By-law 2022-135 be repealed until the Constitutional and Charter questions, as well as other legislative questions, have been answered via a reference through the Courts by the City and/or the Province.

⁴⁶ *Municipal Act*, section 10/11 subsection (2) paragraph 2.

⁴⁷ Analysis: Ottawa council election saw lots of change — but few surprises
<https://ottawacitizen.com/news/politics/ottawa-council-election-saw-lots-of-change-but-few-surprises>
The new council under Mark Sutcliffe will have less collective experience than its predecessor.
Author of the article: Taylor Blewett Publishing date: Oct 25, 2022.

⁴⁸ <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/laws-z/vacant-unit-tax-law-no-2022-135#section-f9dbf190-cd58-4e1a-a281-4f9d6e1b00ea>

Do the actions of the previous Council need to be continued considering one Council cannot bind the successive Council?

Based on Supreme Court of Canada statements a previous Council cannot/should not bind a future Council, therefore there is nothing stopping this new Council from repealing egregious By-law 2022-135 - "*Vacant Unit Tax By-law*" and it would seem it is the moral, ethical thing to do, in light of the information contained in this document.

To some residents the Vacant Unit Tax and the requirements involved are a bridge too far, particularly the reporting. This is unnecessary as the City would have all of the information needed by means of StatsCan, voter's lists, public utilities, garbage pickup, etc., etc., etc. There is also the passing of Bill 23 - *More Homes Built Faster Act, 2022* to secure that there is no need for this action by the City of Ottawa.

BIO

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I am a legal, legislative, historical and constitutional researcher as well as an author. I am not a lawyer and do not give any legal advice. I have published many reports and articles respecting various pieces of Legislation and Legislative Instruments, as well as a book, in its second edition, on property rights. I have authored various articles for the Landowner Magazine, newspapers and on-line media. I have done research for various law offices throughout Ontario and other provinces. I am the Director of Research for Ontario Landowners Association and I do legislative research for elected officials including MPs, MPPs, Municipal Councils, and Municipal Officials, of which my research has been cited in both the provincial and federal parliament. In May of 2012 I was elected to the Board of Directors of the Canadian Justice Review Board (C.J.R.B.). In 2020 I was elected as Chairperson for the C.J.R.B. I have done various radio call in's, a number of public speaking engagements and presented at various committees and tribunals.